THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 7824 of 1996

Dated: 12.12.2006

Between:

Y. Shankar (died) & others

… Petitioners

AND

The Depot Manager, APSRTC,
Warangal-I Depot, Warangal District
& others.

… Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 7824 of 1996

ORDER:-

This writ petition is filed questioning the order of the 3rd respondent, the Industrial Tribunal-cum-Labour Court, Warangal, dated 31.08.1995, made in unregistered miscellaneous petition of 1995.

Y. Shankar, who originally filed the writ petition, was appointed as conductor on daily wage basis with effect from 07.01.1988. Subsequently, the 1st respondent issued orders vide proceedings No.E1/232(2)/89, dated 03.03.1989 whereby his services were regularized as conductor under regulation 17 of the A.P. State Road Transport Corporation Employees (Recruitment Regulation) 1966, in the scale of Rs.455-795. Suddenly, the 1st respondent issued proceedings No.E1/232(2)/89, dated 26.07.1989, whereby, the earlier orders of regularization were cancelled and the employee was asked to work as a conductor on daily wage basis at Rs.40/-. Questioning the said proceedings, Y.Shankar filed W.P.No.10676 of 1989 in this Court. This Court granted an interim order on 03.08.1989.

It is stated in the counter-affidavit filed on behalf of respondents 1 and 2 that by virtue of the interim orders passed by this Court, the

petitioner was allowed to work as conductor albeit on temporary basis, however, it is mentioned that from 01.08.1995 he was allowed to work as conductor on regular basis.

While the said writ petition was pending, the petitioner approached the 3rd respondent, the Industrial Tribunal-cum-Labour Court, under Section 33-C (2) of the Industrial Disputes Act 1947 (for short "the Act") seeking difference of salary from 01.06.1989 to 01.02.1995 and earned leave encashment from 1989-90 to 1995 totalling to a sum of Rs.41,789=50. The 3rd respondent, by the aforementioned impugned order, dismissed the said application mainly on the ground that the petitioner's case does not attract the provisions of Section 33-C (2) of the Act. The other ground on which the said application was dismissed was that there was abnormal delay of six years in filing it.

During the pendency of the writ petition the employee Y.Shankar died and in his place petitioners 2 and 3, who are his wife and son respectively were brought on record.

I have heard Sri B. Sudhakar Reddy, learned counsel for the petitioners and Smt. Rajini Reddy, learned Standing Counsel for APSRTC.

Section 33-C (2) of the Act reads as under:

> "Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, them the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may

be specified in this behalf by the appropriate Government (within a period not exceeding three months).

Provided that where the Presiding Officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit."

A reading of the afore extracted provision shows that the condition precedent for maintaining an application under Section 33-C (2) of the Act is that a workman should be entitled to receive any money or any benefit from the employer. It is only in cases where the quantum of money, which an employee is so entitled, or the amount on which such benefit should be computed is to be decided, then the application under Section 33-C (2) of the Act is maintainable.

In the instant case, the dispute as to whether the petitioner is entitled to the salary payable for a regular conductor during the disputed period viz., 1989-1995 is not adjudicated by any authority. In W.P.No.10676 of 1989, which was referred to above, only the order dated 26.07.1989, cancelling the regularization of the petitioner, was questioned. The petitioner has not claimed the relief of difference of salary nor this Court had granted any such relief to him while disposing of the writ petition with the following order:

"By virtue of the interim order granted by this Court on 03.08.1989, the petitioner got the relief wanted as such no further orders are necessary in this writ petition."

Thus, there is no adjudication of the petitioners' entitlement to receive from the respondents 1 and 2 any money or benefit during the disputed period viz., 1989-1995. In the absence of a prior adjudication of such an entitlement, in my view, the petitioner cannot maintain an

application under Section 33-C (2) of the Act. The 3rd respondent is therefore justified in rejecting the said application filed by late Y.Shankar and the said order does not suffer from any illegality.

As regards the observation that the application was filed with an abnormal delay of six years, as the very application itself is not maintainable the said observation ceases to have any relevance.

The learned counsel submits that in the event of petitioners 2 and 3, who are the legal representatives of the deceased first petitioner, seek an adjudication on merits about the entitlement of the deceased employee for the difference in salary for the disputed period, they may be given liberty to approach the appropriate forum for the said relief.

Having regard to the facts and circumstances of the case, I deem it proper that the petitioners 2 and 3 be permitted to raise such a dispute and on raising such dispute the authority, competent to adjudicate such a dispute, may decide the same.

With the aforementioned observations, the writ petition is dismissed. No order as to costs.

C.V. NAGARJUNA REDDY, J

Date: 12.12.2006
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